

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

### SUPPLEMENT

#### GOVERNMENT OF GOA

##### Department of Labour

##### Order

No. 28/21/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*B. N. Bhat*, Under Secretary (Industries and Labour).

Panaji, 11th January, 1995.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/39/89

Shri Balkrishna P. Ainkar  
Curtorim, Salcete, Goa.

v/s

M/s Goa Shipyard Ltd.,  
Vasco-da-Gama.

— Workman/Party I

— Employer/Party II

Party I represented by Adv. J. F. D'Souza.

Party II represented by Adv. P. J. Kamat.

Panaji, Dated : 29-11-1994.

##### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of

1947) the Government of Goa by order dated 15th June, 1989 bearing No. 28/21/89-ILD, referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of M/s Goa Shipyard Limited, Vasco, in terminating the services of their workman Shri Balkrishna P. Ainkar, Marine fitter, with effect from 13-5-1987 is legal and justified?"

If not, to what relief the workmen is entitled?"

2.. On receipt of the reference, a case was registered under No. IT/39/89 and registered A/D notices were issued to both the parties. In pursuance to the receipt of the notice, the parties put in their appearance. The Party I (For short, 'workman') was represented by Adv. J. F. D'Souza and Party II (For short, 'Employer') was represented by Adv. P. J. Kamat. The workman filed his statement of claim which is at Exb. 2. The case as set up by the workman in his statement of claim is that he was employed with the employer as a Marine Fitter (elect) at Vasco-da-Gama, Goa. The workman was issued a charge sheet dated 5-11-1986 bearing No. GSL/04/01/1081 and was asked to show cause as to why disciplinary action should not be taken against him. The allegation made against the workman in the chargesheet is that on 5-11-86 while the workman was going out with his Air bag, he was stopped by the watchman on duty for checking his bag at the gate. On taking the search of the bag it was found that the workman had kept 8 bulbs of 60 watt belonging to employer, in his bag. Workman was charged with the offence of committing theft, fraud, dishonesty, which constituted mis-conduct under the employer's standing orders. The workman replied to the said charge sheet denying the allegations made against him. The contention of the workman is that he was on duty on 4-11-1986 for the second shift from 4 p. m. to 00-hrs. He had gone out during the dinner time and he purchased the said 8 bulbs from the market. He had not taken the said bulbs inside the security belt. When he was returning home at about 6.30 a. m. on 5.11.86 after completing his duties and taking rest in the rest room, the security personnel searched his bag and found the said 8 bulbs. In spite of telling the security personnel that the bulbs were purchased by him, the security personnel with the help of other three watchmen pressured him to sign a statement. After the receipt of the reply, the employer not being satisfied with the explanation given by the workman, appointed an enquiry officer and conducted the domestic enquiry. The enquiry officer conducted the enquiry and submitted his report to the employer holding that the employer had succeeded in proving charges against the workman and the workman was guilty of misconduct. The employer accepted the findings of the enquiry

officer and by order dated 13-5-1987 dismissed the workman from service. The workman has contended that the termination of his service by the employer is illegal and arbitrary. The workman therefore claimed reinstatement in service.

3. The employer filed the written statement which is at Exb. 3. In the written statement the employer contended that the workman after being checked by the security personnel admitted that the 8 bulbs found in his bag belonged to the employer and that he was taking them out without authority. The employer recorded his statement to that effect and also drew the panchanama. The employer denied that the workman had purchased the bulbs from the market. The employer stated that the canteen is situated within the factory premises and the security belt. If the workman had purchased the bulbs, he ought to have declared the same at the security gate on 4-11-1986 itself before taking them inside the canteen. The employer contended that the version of the workman that he purchased the bulbs from the market during the dinner time is a fabricated story since M/s Kothari Electricals from whom the workman is said to have purchased the bulbs, by letter dated 27-4-1987 informed the employer that their shop closes at 8 p. m. and the meal hours for the second shift is from 8 p. m. and 9 p. m. The employer contended that the workman was dismissed from service after holding proper enquiry and the enquiry officer finding him guilty of the charges. The employer therefore denied that the termination of the service of the workman was illegal or arbitrary. Thereafter, the workman filed his rejoinder which is at Exb. 4. In the Rejoinder, the workman reiterated and maintained what was stated by him in the statement of claim. The workman also contended that the enquiry held against him was illegal.

4. Based on the pleadings of the parties, following issues were framed at Exb. 5.

1. Whether a fair and impartial enquiry was held and conducted against the workman regarding the incident dated 5-11-1987?
2. If so, whether the workman fully participated in the enquiry and principles of natural justice were followed by the Enquiry Officer during the conduction of the enquiry against the workman?
3. If so, whether the findings of the enquiry officer at the end of the enquiry are just and proper and whether they call for any interference at the hands of this Tribunal?
4. If not, whether the order of the management in terminating the services of the workman is just and legal in the circumstances of the case?
5. If not, what reliefs if any is the workman entitled to in this Government reference?

5. The issue Nos. 1 and 2 were treated as preliminary issues by my learned Predecessor since the said issues were relating to the conducting of fair and impartial enquiry and participation of the workman in the said enquiry. After considering the evidence led by both the parties on the said issues, my learned Predecessor Shri Dhavale, gave his findings on the issue Nos. 1 and 2 on 24-7-1992 holding that the enquiry held was fair and impartial; the workman fully participated in the said enquiry and the principles of natural justice were followed by the enquiry officer during the conduction of the enquiry against the workman. Issue Nos. 1 and 2 were accordingly answered in the affirmative.

6. After the findings were given on issue Nos. 1 and 2, the parties were directed to lead evidence on other issues. Accordingly, both the parties led evidence. On considering the evidence on record my findings on the remaining issues are as under:

- Issue No. 3:- The findings of the enquiry officer are not just and proper and hence interference by this Tribunal is called for.
- Issue No. 4:- Order of Termination of service of the workman is not just and legal.
- Issue No. 5:- As per para 8 and order below.

## REASONS

7. Issue Nos. 3 & 4: — Issue Nos. 3 & 4 are taken up together since they are inter-related to one another.

Once it is held by the Tribunal that the enquiry conducted by the enquiry officer is fair and impartial, does it mean that the Tribunal has to accept the findings of the enquiry officer? The answer is "No". It is now a settled law that the Tribunal can re-appraise the evidence led by the parties in the domestic enquiry. The Supreme Court in the case of *The Workmen of M/s Firestone Tyres and Rubber Company of India Pvt. Ltd., v/s The Management and Others*, reported in AIR 1973 S. C. 1227 in para. 32 of its Judgement has held that since the introduction of Sec. 11-A in the Industrial Disputes Act, 1947, the Tribunal was now clothed with the power to appraise evidence in domestic enquiry and satisfy itself as to whether the said evidence relied on by the employer established the misconduct alleged against the workman. The Bombay High Court in the case of *E. Merck (India) Ltd. v/s V. N. Parulekar and others*, reported in 1991 (2) Bom., C.R. 201 has held that it is the duty of the Tribunal to reappraise the evidence and satisfy itself as to whether misconduct alleged against the workman is proved or not. From the above decisions of the Supreme Court and the Bombay High Court it follows that the Tribunal is vested with powers to reappraise the evidence led by the parties in the domestic enquiry and find out whether the misconduct alleged against the workman is proved or not. In fact a duty is cast on the tribunal to satisfy itself whether the evidence led in the domestic enquiry proves misconduct alleged against the workmen. With this background in mind and the law laid down by the Supreme Court and the Bombay High Court it is to be seen whether the evidence led before the enquiry officer and this Tribunal establishes the misconduct alleged against the workman.

The misconduct that is alleged against the workman is that the workman committed the theft of 8 bulbs of 60 watt each, belonging to the employer. The case of the employer is that on 5-11-1986 while the workman was going with his Air bag the watchman on duty on checking his bag found 8 bulbs of 60 watt each in the said bag. According to the employer, the said bulbs belonged to them, and that the workman admitted his guilt. The workman has denied that he committed the theft. His contention is that he purchased the said bulbs from M/s Kothari Electricals, Vasco-da-Gama, on 4-11-1986 during the dinner time around 8.00 p.m. The said shop is situated at a distance of about 1 1/2 km from the establishment of the employer. The workman relied upon the bill dated 4-11-1986 issued by M/s Kothari Electricals. Adv. Shri J. F. D'Souza, appearing for the workman argued that the enquiry officer while giving his findings did not consider at all the evidence led by the workman in his defence. He submitted that the inference drawn by the enquiry officer for not producing the bill by the workman along with the reply to the charge sheet or at the time when he was caught is not correct and not legally sound. He submitted that the reply was only by way of explanation and it was not necessary that the bill ought to have been produced along with the reply. He further submitted that the enquiry officer has not considered the bill at all produced by the workman to substantiate his case that he had purchased the bulbs from M/s Kothari Electricals. He also submitted that the statement alleged to have been given by the workman before Mr. Furtado, after the bulbs were found in his bag, was obtained by the employer under pressure and that the workman did not know what was mentioned in the said statement. Lastly, he submitted that the enquiry officer had given undue weightage to the letter dated 28-4-1987 (Exb. 20) written by M/s Kothari Electricals. Adv. Shri P. J. Kamat on the other hand submitted that the guilt of the workman was proved beyond doubt from the evidence produced by the employer. He submitted that there was no substance in the submissions of the workman that his statement was obtained under pressure. There is no evidence led by the workman to that effect. He further submitted that there were material contradictions between the statement of Shri Patre and that of the workman on the

point of purchase of the bulbs by the workman. He also submitted that the canteen is situated inside the security belt of the factory premises of the employer and therefore the workman had to register the said parcel containing the bulbs with the security personnel at the gate, and since the same was not done, there was a presumption that the goods taken inside the factory premises without registering them, belong to the employer. He argued that if the workman had purchased the bulbs, nothing prevented him from producing the bill after he was caught red handed or at least he should have produced it along with the reply to the charge sheet. Having not done so, the bill produced by the workman in the course of the enquiry raised serious doubts and much when M/s Kothari Electricals had written to the employer that the bill must have been issued by them in the morning session or in any event before 5 p. m. on 5-11-1986. Adv. P. J. Kamat therefore submitted that the findings of the enquiry officer were absolutely proper and supported by evidence on record. He further stated that the termination order issued by the employer was legal and justified.

I have carefully considered the arguments advanced by both the learned Advocates. The charge that is levelled against the workman is that he committed the theft of 8 bulbs of 60 watt each belonging to the employer and this theft was detected when the Security Personnel of the employer searched the bag of the workman on 5-11-1986 around 6.30 a.m. The defence that is set up by the workman is that the said bulbs were purchased by him on 4-11-1986 around 8.00 p.m. during the dinner break from the shop of M/s Kothari Electricals. In the enquiry before the enquiry officer, the employer examined Capt. V. S. Vilekar, the management representative, Shri Dhan Singh the Watchman, Shri Subhas Naik, the Security Personnel and Shri M. Furtado, the Asst. Security Officer, in support of their case. Whereas, the workman examined himself and two other witnesses namely Shri Patre and Shri Ashok Naik in support of his case. The workman has not disputed the finding of the bulbs in his bag. His case is that the said bulbs were purchased by him in Vasco marked on 4-11-1986. In cross examination of the workman before the enquiry officer, question was put to the workman as to, if the bulbs were purchased by him, how was that out of the 8 bulbs, 4 bulbs were without cover? The workman replied that the covers might have been torn by Mr. Furtado while checking the bulbs. This shows that the workman had not admitted that the four bulbs were without cover. None of the witnesses examined by the employer have stated that 4 bulbs out of the 8 bulbs found in the bag of the workman were without cover. The employer produced the Panchanama carried out by Mr. Furtado, in respect of the bulbs found in the bag of the workman. However, nowhere in the Panchanama it is stated that out of the 8 bulbs, 4 bulbs were without cover. Therefore the contention of the employer that 4 bulbs were found without cover does not stand proved. The employer also produced the statement supposed to have been given by the workman before Mr. Furtado. According to the employer, this statement was given by the workman in the security office on 5-11-1986 around 7.30 a.m. wherein he admitted of having committed the theft. However, the workman denied that he gave such a statement. His case is that he was pressurised and without knowing the contents, he signed the statement which was written by some third person. From the evidence which is brought on record by the employer before the enquiry officer, a serious doubt is created whether, the workman gave the statement voluntarily or whether he knew what was written in the said statement. It is an admitted fact that the statement was written by the clerk of the security office. Not a single witness has said that the clerk wrote down whatever was stated by the workman. Whereas, it is the case of the workman that he was made to sign the statement which was already written. Also, none of the witnesses of the employer has stated that the statement was read over to the workman or that the workman read the statement before his signature was obtained on the same, except Mr. Furtado who has stated that the statement was dictated by the workman himself, in the presence of one Subhas Naik, Dhan Singh and Shri Chari, the clerk. Shri Subhas Naik has stated that the statement of the workman was signed by

him as well as by Dhan Singh. However, the statement which has been produced as Exb. W-1 does not bear the signature of either Subhas Naik or Dhan Singh. Further, Mr. Furtado does not say that he obtained the signatures of Shri Subhas Naik and Shri Dhan Singh on the statement of the workman. Also, much credence to the evidence of Shri Subhas Naik and Mr. Furtado cannot be given as to what transpired in the Security Office or how the search of the bag of the workman was taken. According to Shri Furtado, statement of the workman was obtained in the Security Office, around 7.30 a.m. to 8.00 a.m. in the presence of Subhas Naik and Dhan Singh. Further, according to Subhas Naik, this statement was signed by him as well as by Dhan Singh. Also, according to Shri Furtado and Shri Naik search was taken in the Security Office. The evidence of Shri Dhan Singh on this aspect is just the contrary. In his evidence, in his chief itself, he has stated that on 5-11-86 he was on the main gate at about 6.30 a.m. and that Subhas Naik came near the security gate as per the instructions from Shri Furtado and took the search of the bag. Therefore, the statement of Mr. Furtado and Mr. Subhas Naik that the bag was searched in the security office is not supported by their own witness Shri Dhan Singh. As regards the statement of the workman, Mr. Furtado and Mr. Subhas Naik have stated that Dhan Singh was present when the workman gave statement. Mr. Subhas Naik has gone to the extent of saying that the statement was signed by him and Dhan Singh. However, in his statement before the Inquiry Officer, Dhan Singh does not say a word about the signing of the statement given by the workman, by him. On the contrary, in his cross examination, he has stated that on 5-11-1986 at 6.30 a.m. after handing over the workman to Mr. Furtado, he went to his duty post and left at 8 a.m. and that he does not know where the workman was during this time. If the statement was signed by Mr. Naik and Dhan Singh, where this statement has gone? and why was it not produced? If it is the same statement which is produced at Exb. W-1 it means Shri Subhas Naik and Dhan Singh were not present when the statement of the workman was obtained. Besides, the employer has not examined the clerk Shri Chari who had written down the statement. He would have been a material witness to say whether the statement written by him was as per the say of the workman and whether he had read it or it was explained to him before he signed. In the circumstances, statement of the workman alleged to have been given admitting his guilt cannot be much relied upon. The said statement is not free from doubt.

The employer has argued that since the workman did not declare at the security check post the bulbs, before he took them in the canteen, it is deemed that the said bulbs belonged to the employer. I am not inclined to accept this submission. Merely because such declaration was not made, it does not mean that presumption arises in favour of the employer as to the ownership of the goods. It may be said that it is lapse on the part of the workman not to make such a declaration. The declaration is required to be made for number of reasons. Even if it is assumed that such a presumption arises in favour of the employer, the presumption is always rebuttable. From the evidence on record, I am of the opinion that the workman has succeeded in rebutting this presumption. All along the case of the workman is that the said bulbs were purchased by him from the Vasco market. Admittedly, the said bulbs did not carry any markings of the employer. It is also in evidence of Shri Subhas Naik, Security Officer, that when he found the bulbs in the bag of the workman, the workman told him that he had purchased the said bulbs, and when he asked him to produce the receipt he could not do so. The workman in his evidence has stated that he had told the Security Officer that the bill/receipt was in the dicky of the scooter but he was not allowed to bring the same. This statement of the workman lends support from the statement of Shri Subhas Naik who has stated that Mr. Furtado had told him not to let the workman go out. If the workman was not allowed to go out how he could produce the receipt or the bill? The employer has tried to take undue advantage of the fact that the workman did not enclose alongwith the reply to the charge sheet, the bill to show that the bulbs were purchased him. The contention of the employer is that the bill produced by the workman in the course

of the enquiry casts serious doubts, and that it must have been procured subsequently. Even suggestion to this effect was put to the workman in his cross examination when he was examined before this Tribunal. The workman denied this suggestion and stated that he did not send the bill along with the reply because the employer did not call for it. It appears that the workman was not aware that he had to produce the bill along with the reply, as the charge sheet issued to him only called for explanation from him which he did and he was not asked to produce any documents in support of his case. In his reply, he has stated that he has purchased the said bulbs. The contention of the employer that the bulbs must have been procured by the workman subsequently is disproved by the letter produced by the employer from M/s Kothari Electricals at Exb. 20- M/s Kothari Electricals in the said letter never disputed that the bulbs were purchased from their shop on 4-11-86. According to them the bill must have been issued by them on 4-11-1986 before 5 p.m. Therefore, the bill produced by the workman supports his case that the bulbs were purchased by him. The employer has not suggested to the workman that the bill which is produced by him is not in respect of the bulbs found in his bag. Much of the evidence is on the point of time as to when the bulbs were purchased. The contention of the workman that he purchased the bulbs between 7.30 p.m. to 8.00 p.m. on 4-11-1986 is supported by the evidence of Shri Patre. The other contention of the workman that he carried the parcel containing the bulbs to the canteen is also supported by the said witness, though in cross examination he has stated that he did not know what the parcel contained. However, the fact remains that on 4-11-1986 after 8.00 p.m. the workman carried the parcel to the canteen. Shri Patre in his statement before the Enquiry Officer has stated that he left the premises of Goa Shipyard on 4-11-1986 on his scooter along with the workman around 7.55 p.m. It is not in dispute that the dinner break for the second shift is between 8 p.m. and 9 p.m. and that the workman and Shri Patre were working in the second shift on 4-11-1986. The Employers themselves have stated in their written statement that the distance between the shop of M/s Kothari Electricals and the premises of the employer is about 1 1/2 km. to 2 kms. Therefore, it would take hardly 5 minutes to reach the shop of M/s Kothari Electricals from the premises of the employer. The bill produced by the workman is in respect of the 8 bulbs purchased on 4-11-1986. To counter this piece of evidence produced by the workman, the employer has tried to bring in evidence in the form of letter dated 28-4-1987 Exb. 20 written by M/s Kothari Electricals to show that the said bulbs were not purchased during dinner break on 4-11-1986, as contended by the workman. It is to be seen how much weightage can be given to this letter Exb. 20. M/s Kothari Electricals have not disputed the issuing of the bill Exb. 10 nor the purchase of the 8 bulbs on 4-11-1986, in the said letter. The time factor mentioned in the said letter regarding the issuing of the said bill is very very vague. M/s Kothari Electricals is not sure whether the bill was issued in the morning session or in the evening session. In the letter, it is stated that the bill most probably was issued during morning session and certainly before 5 p.m. The first thing is that the bill was issued on 4-11-1986 and the letter of M/s Kothari Electricals is dated 28-4-1987. The time gap between the two is almost 5 1/2 months. It is very surprising how M/s Kothari Electricals could give the time of purchase of the bulbs nearly 5 1/2 months after their purchase and that too by referring only to the bill? It is hard to digest that a vendor can state the time of the purchase of his goods by looking at the bill issued by him. Beside, there is nothing on record to show as to on what basis M/s Kothari Electricals could state the time of purchase of the bulbs. Also, the manner in which M/s Kothari Electricals could state the time of purchase of bulbs, and the manner in which reply is given goes to show that M/s Kothari Electricals in any event was interested in stating that the bulbs were purchased much before 8 p.m. on 4-11-1986. The employer has examined Shri Kamran, the Asstt. Manager, of the employer in the proceedings before this Tribunal. In his cross examination he has admitted that M/s Kothari Electricals is one of the suppliers of the employer. It is therefore quite possible that M/s Kothari Electricals has given the said letter to oblige the

employer. The employer has not examined any person on behalf of M/s Kothari Electricals, thereby denying the opportunity to the workman to test the veracity of the contents of the said letter. Considering all these facts, I find that the evidence brought on record by the employer is not sufficient to prove the misconduct alleged against the workman. The findings of the enquiry officer are not based on legal evidence. The findings show total inapplicability of the mind by the enquiry officer to the facts of the case and the evidence on record. In the circumstances, I hold that the findings of the enquiry officer are not just and proper, they being perverse and suffering from total non-applicability of mind. Hence interference in the findings of the enquiry officer is called. The order passed by the employer terminating the services of the workman is based on the findings given by the employer. Since the findings of the enquiry are held to be not just and proper by me, the order of termination of service is also not just and proper, it being based on the said findings. I, therefore hold that the order of termination of service of the workman is not just and legal. In the circumstances, I answer the issues accordingly and set aside the findings of the enquiry officer and consequently the order of termination of service of the workman also.

8. *Issue No. 5:—* It has been held by me that the order of termination of the service of the workman is not just and legal. I have also set aside the said order of termination of service. This being the position the workman is entitled to reinstatement. I must however say that though I have held that the misconduct alleged against the workman is not proved by legal evidence, the conduct of the workman is not free from doubt. The question remains, whether the workman should be granted reinstatement with full back wages. The ordinary rule is that, a workman should be entitled to full back wages in case he is entitled to reinstatement. However, it has been held in number of cases by the Hon'ble Supreme Court that granting of the amount of back wages could depend upon the facts and circumstances in each case and the Tribunal has powers to award such amount of back wages as the Tribunal may deem fit in the circumstances of the case. The Supreme Court in the case of *Western India Match Co. Ltd., V/s Third Industrial Tribunal, West Bengal* and others reported in 1978 (1) LLJ at page 206 has held that in the matter of recompensing by award of back wages and other benefits the Court should be realistic and the act of the court should not injure any party. In the present case, the workman examined himself before this Court. In his cross examination, he admitted that he had given Power of Attorney in favour of his brother prior to 28-4-1990, since he had gone to Bombay for service. He has further admitted that he was also serving in Gujrat and that he was paid Rs. 1300/- p.m. besides food. Therefore, there is evidence from the workman himself that he was gainfully employed after termination of his service. The records of the case also show that on 28-4-1990 and 6-9-90 when the case was fixed for evidence, the workman was absent and his brother attended the hearings. Subsequently also, when the case was fixed for recording evidence of the workman on 5-9-91; 10-10-91; 20-11-91; 27-1-92; 21-3-92; evidence could not be recorded as the workman was in service outside Goa. Further, between 16-7-90 to 16-4-91 and 30-6-93 to 6-7-94, the case could not be taken up for hearing due to the superannuation of the Presiding Officer of this Tribunal. Also, though the termination order was issued to the workman on 13-5-1987, reference was made by the Govt. only on 15th June, 1989. The Hon'ble Supreme Court in the case of *Western India Match Co. Ltd. (Supra)* has held that the parties are not to be blamed for the prolongation of the proceedings in the court when the prolongation is not on account of the fault on either side. It has held that the act of the Court should not injure any party. In the circumstances of the case, the Hon'ble Supreme Court found that the awarding of 50% of the back wages was justifiable. In the present case also, the proceedings could not be held for a considerable long time due to the non-functioning of this Tribunal. Also, the workman himself had contributed to the prolongation of the proceedings due to his employment outside Goa. Taking into consideration all these factors and the Act that the workman was gainfully

employed after the termination of his service, it would be justifiable to grant 50% of the back wages to the workman. In the circumstances, I hold that the workman is entitled for reinstatement with 50% of the back wages and all other consequential benefits. Hence, I pass the following order.

**ORDER**

It is hereby held that the action of the management of M/s Goa Shipyard Limited, Vasco, in terminating the services of their workman Shri Balkrishna P. Ainkar with effect from 13-5-1987 is illegal and unjustified. The workman Shri Balkrishna P. Ainkar is ordered to be reinstated with 50% of the back wages and all other consequential benefits.

There shall be no order as to costs.

Inform the Government accordingly.

Sd/-

(AJIT J. AGNI)  
Presiding Officer  
Industrial Tribunal

**Order**

No. Misc/Award/96-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa,

J. M. de Almeida, Jt. Secretary (Labour).

Panaji, 25th June, 1996.

**IN THE INDUSTRIAL TRIBUNAL**

**GOVERNMENT OF GOA**

**AT PANAJI**

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/40/89

Shri Vithal V. Pai,  
Rep. by Goa Trade & Commercial  
Workers' Union,  
Panaji-Goa.

— Workman/Party I

v/s

The Managing Director,  
Goa Telecommunication & System Ltd.,  
Mapusa-Goa.

— Employer/Party II

Workman/Party I represented by Adv. Shri Nitin Bodke.  
Employer/Party II represented by Adv. P. J. Kamat.

Dated: 18-3-1996

**AWARD**

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by order dated 15-6-1989 bearing No. 28/25/89-ILD, referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Goa Telecommunications and Systems Limited, Mapusa, Goa, in denying additional increment to their workman, Shri Vithal V. Pai, is legal and justified?"

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/40/89 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Party I (for short, 'workman') filed his statement of claim. The facts of the case in brief are that the workman was appointed by the Party II (For short, 'employer') as an accounts clerk by letter dated 31-3-84 and he was to be on probation for a period of six months from the date of his appointment. By letter dated 7-10-1984 the employer informed the workman that his performance was satisfactory during the probation period and hence he was confirmed in service as accounts clerk w.e.f., 7-10-84. Thereafter by letter dated 4-7-1985, the workman was informed that in appreciation of his performance he was promoted to a higher grade w.e.f., 7-4-1985. Subsequently, the workman was again promoted to the post of Accounts Assistant Grade 'B' by letter dated 2-6-88, and his basic salary was fixed at Rs. 550-28-690-EB-35-865. That in September, 1988, the workman learnt that another workman by name Shri Sajro V. Naik who was junior to the workman by 4 months, and who also appointed as accounts clerk and subsequently promoted to the post of Accounts Asst. Grade 'B' was fitted in the basic salary of Rs. 578/- p.m., whereas the workman was fitted in the pay scale of Rs. 550-28-690-EB-35-865. That since inspite of the request of the workman to undo the injustice done to him, nothing was done by the employer, the workman approached the Union including the 'Goa Trade & Commercial Workers' Union' to do the needful in the matter. That by letter dated 22-9-88, the Joint Secretary of the Goa Trade & Commercial Workers' Union (for short, 'GT & CW Union') raised an industrial dispute, before the Asst. Labour Commissioner, Mapusa, Goa, as regards the injustice caused to the workman. The employer filed their reply before the Asst. Labour Commissioner denying that Shri Sajro V. Naik was fitted in basic salary of Rs. 578/- p.m., and stated that additional increment was granted to him because of his good performance. That the employer stated that in appropriate cases additional increment is given to the workmen and while granting such additional increment performance records prepared by the Head of the Department are taken into consideration. That the employer stated that the performance of the workman is far below the prescribed norms and the performance of Mr. Naik was much better than the workman and hence it was decided to give additional increment to him and that is why he was drawing basic wage of Rs. 578/- p.m. That there was an exchange of correspondence between the Union and the employer and since conciliation proceedings ended in a failure, a failure report dated 11-4-89 was submitted by the Asst. Labour Commissioner, Mapusa, Goa. The workman denied that his performance was far below Shri Naik as contended by the employer and further contended that in case his performance was far below normal, he ought to have been informed about it by the employer or a memo ought to have been issued to him. The workman contended that the conduct of the employer was patently arbitrary, mala fide, unjustified and illegal. The workman therefore claimed that he was entitled to a declaration from this Tribunal that the action of the employer in denying additional increment to the workman is illegal and unjustified and further directing the employer to pay to the workman additional increment of Rs. 28/- p.m., w.e.f., 7-4-1988.

3. The employer filed the written statement denying the claim of the workman. The employer raised the preliminary objection as regards the

maintenance of the reference. The employer contended that the dispute referred by the Government is an individual dispute and not an industrial dispute, and the dispute raised by GT&CW Union cannot be transformed into industrial dispute as the said Union is not an Union of the workmen of the employer company. The employer contended that the dispute ought to have been raised by the internal union of the workmen namely Goa Telecommunications and Systems Ltd., Employee's Association, of which the workman is a member. As regards the merits of the case the employer stated that when an employee is appointed, he is taken on probation for a period of six months and after satisfactory completion of the probation period the employee is placed in the pay scale applicable for respective grades and is normally fitted at the start of the basic pay in the scale. The employer stated that there are no chances for the employees for promotion to high grades as the number of vacancies are limited and all the employees being in the age group of 20 to 25 and retirement age being 58 years. The employer stated that it therefore introduced a Time Bound Promotion Policy (for short, 'Policy') by which opportunities were provided to the employees from one grade to another on completion of certain years of service in one grade. The said policy was reduced into writing at the request of the internal union in the year 1988 and the employees were promoted according to the said policy. The employer further stated that the undeserving cases, where the performance of an employee is good, after considering the rating by the Departmental Heads and on recommendations of the Departmental Promotion Committee (for short, 'DPC') an additional increment is given to the employee at the time of fitment and accordingly is fitted at one increment higher in the pay scale, and the workman was aware of the above policy of the employer as he was the active member of the internal union. The employer stated in the 4th year of the service of the workman, he was promoted to grade VIII and fitted in the pay scale of Rs. 550-28-690-EB-35-865. The employer contended that the ratings given by the Departmental Head to Mr. S. V. Naik and one Mr. Prakash Tamse were better than to the workman and on recommendations from the DPC an additional increment of Rs. 28/- was given to them in the pay scale of Rs. 550-25-690-EB-35-865, and this was the purely administrative decision of the employer. The employer denied that the workman had approached the employer against the alleged anomaly and injustice. The employer however admitted that the workman had approached the internal union on the issue of grant of additional increment to Mr. S. V. Naik, and stated that the said union did not take up the grievance of the workman as the said union was aware of the performance of the workman and the discretion of the employer in granting additional increment in deserving cases. The employer admitted about the representation made by the GT&CW Union to the Asst. Labour Commissioner, and that the employer filed its reply dated 4-10-88 before the Asst. Labour Commissioner. The employer stated that an objection was raised before the Asst. Labour Commissioner that the GT&CW Union was not the Union of the workmen of the employer and hence the dispute raised by the said Union is not an industrial dispute. The employer denied that the performance of the workman was good or that any injustice was caused to the workman. The employer stated that the workman was disobeying the orders of the Dy. Manager, Accounts and hence show cause notice dated 6-7-89 was issued to him which the workman refused to accept, and subsequently charge sheet dated 11-7-89 was issued to the workman for misconduct. The employer denied that its conduct is arbitrary, malafide, unjustified or illegal. The employer also denied that the workman was entitled to the reliefs as claimed by him. Thereafter the workman filed the rejoinder. The workman denied that there was no industrial dispute. He contended that any dispute raised by the workman against the company which is an 'industry' is an industrial dispute. The workman denied that he at any time disobeyed the orders of the superiors.

4. On the pleadings of the parties, following issues were framed at Exb.9.

1. Does Party I prove that he is entitled to additional increment as claimed by him?
2. Does Party II prove that there is no industrial dispute between the parties and hence the reference is not tenable?

3. Does Party II prove that Goa Trade & Commercial Workers' Union has no locus standi to represent the case of Party I?

4. Is Party I entitled to any relief?

5. What Award or Order?

5. After the issues were framed both the parties agreed that the issue Nos. 2 and 3 which were touching the maintainability of the reference, be tried as preliminary issues and accordingly both the parties led evidence on the said issues. On considering the evidence on record my findings on the issues are as under:

- Issue No. 1 — Does not arise
- Issue No. 2 — In the affirmative
- Issue No. 3 — In the affirmative
- Issue No. 4 — In the negative
- Issue No. 5 — As per order below.

#### REASONS

6. Before I proceed to discuss the issues, I would first deal with the objection which is raised by Adv. Shri Bodke on behalf of the workman in the course of his arguments. The objection that is raised is that, the employer should not be allowed to raise preliminary objection and that the case should be decided on merits. Adv. Shri Bodke has relied upon the decisions of the Supreme Court (1) in the case of Workmen employed by Hindustan Lever Ltd. v/s Hindustan Lever Ltd., reported in 1985 SCC (L&S) 6 and (2) S. K. Verma v/s Mahesh Chandra and another, reported in (1983) 4SCC 214. I have gone through the said decisions of the Supreme Court. It is true that in the case of Hindustan Lever Limited (supra) the Supreme Court has disapproved the raising of frivolous preliminary objections and has held that the employer should not be allowed to raise such preliminary objections. In the case of S. K. Verma (supra) the Supreme Court has held that a public sector corporation which is an instrumentality of the State should not evade decision on merits by raising preliminary objections on rigid technical grounds so as to avoid the charge of being a bad employer or of victimisation. However, in the present case the employer had raised the objections as regards the maintainability of the reference on the ground that there is no industrial dispute and that the Goa Trade & Commercial Workers Union had no locus standi to raise the dispute, and the issue Nos. 2 and 3 framed in this respect. Both the parties agreed that the said issues be treated as preliminary issues and the parties also led evidence on the said issues. Arguments were heard from both the parties on the said preliminary issues and it is only at the fag end of the arguments in reply that Adv. Shri Bodke appearing for the workman raised the objection that this Tribunal should not decide the preliminary issues but instead decide the case on merits. Perhaps the objection raised by the workman would have been justifiable if it was raised before trying the issue Nos. 2 and 3 as preliminary issues and the parties had led the evidence. However, in the present case as I have said earlier, no such objection whatsoever was raised by the workman and he had also participated in leading evidence on the said issues. I am therefore of the opinion that the workman cannot be allowed to raise the objection at the stage of arguments on the merits of the said two issues, that the said two issues should not be tried as preliminary issues, when they are already treated as preliminary issues and evidence is led by the parties on the same. In the circumstances, I dismiss the objection raised by the workman.

Issue Nos. 1 & 2:

7. Both these issues are taken up together as they are inter-related to one another. Adv. Shri P. J. Kamat, learned Advocate for the employer submitted that there is an internal union of the workmen of the employer known as Goa Telecommunication & Systems Employees Association, and this Union is recognised by the employer. He submitted that about the existence of the internal union is proved through the deposition of the witness Shri Kenkre and also by the settlements which are on record. He submitted that the claim made by the workman is as regards payment of

additional increment and hence it does not fall within the scope and ambit of Sec. 2A of the I.D. Act, 1947. He contended that what can be referred by the Government is only the industrial dispute and not an individual dispute. He referred to Sec. 2(k) of the I.D. Act, 1947 and submitted that in order that individual dispute should become an industrial dispute it is necessary that the dispute should be espoused by an union or by a substantial number of workmen. He submitted that in the present case the dispute of the workman was not espoused by the internal union of the workmen of the employer but by the Goa Trade and Commercial Workers' Union, which according to him is not the recognised Union nor the workmen of the employer are the members of the said Union. He submitted that the union has not led any evidence to show that besides the workman, other workmen of the employer are its members, nor it has produced any resolution to show that it has the authority to represent the workman. Adv. Shri P. J. Kamat therefore contended that if at all, the dispute could have been raised by the internal union, that is, The Goa Telecommunication and Systems Employees Association and not by GT&CW Union who has no locus standi to raise the dispute. He submitted that the existence of the internal union is also admitted by the workman in para. 7 of his statement of claim wherein he has stated that firstly he approached the internal union and then the GT&CW Union. He also submitted that the receipt dated 13-8-88 Exb. 24 is a fabricated document as there are over writings on the same and also because original book is not produced nor the records for the period from the year 1989 to 1994 are produced. This according to him goes to show that the receipt is fabricated only to create an evidence that the workman was the member of the GT&CW Union. Adv. P. J. Kamat submitted that the employer has sufficiently proved that there is no industrial dispute as it is not espoused by the recognised union or by substantial number of workmen and the GT&CW Union has no locus standi to espouse the dispute of the workman and hence the reference is not maintainable and is liable to be rejected. In support of his above contentions he relied upon the decisions of the Supreme Court in the case of (1) The Bombay Union of Journalists and Others v/s The Hindu, reported in AIR 1963 SC 318 (2) The State of Punjab v/s The Gondhara Transport Co. (P) Ltd., and Others, reported in AIR 1975 SC 531 (3) M/s Western India Watch Company Ltd., v/s The Western India Watch Company Workers Union, reported in 1970 ILLJ 256 and that of the Calcutta High Court in the case of Deepak Industries Ltd. and another v/s State of West Bengal, reported in 1975 Lab. I.C. 1153. Adv. Shri Bodke on the other hand submitted that the dispute raised by the workman is an industrial dispute and it falls within the ambit and scope of Sec. 2(k) of the I.D. Act, 1947. As regards the objection of the employer that the GT&CW Union had no authority or locus standi to espouse the dispute of the workman, Adv. Shri Bodke submitted that the said Union had the authority to represent in terms of Sec. 36 of the I.D. Act, 1947. He submitted that in the conciliation proceedings the workman was represented by Shri Mangueshkar and Shri Coutinho and the employer had never objected to the same and therefore now the employer cannot turn around and say that the GT&CW Union has no locus standi as Shri Mangueshkar and Shri Coutinho were the committee members of the GT&CW Union. Adv. Shri Bodke next contended that the decision of the Supreme Court in the case of Bombay Union of Journalists (supra) is not applicable because it is overruled by the Supreme Court in the case of workmen of M/s Dharam Pal Premchand (Saugandhi) v/s Dharam Pal Prem Chand (Saugandhi) reported in AIR 1966 SC 182. He further submitted that the GT&CW Union was a minority union which was recognised by the employer and the workman was the member of the said union. He contended that even if the receipt which is on record is discarded still the fact remains that the workman was the member of the said union, and it is proved through the evidence of Mr. Fonseca, the President of the said Union, who has been examined by the workman on his behalf. He further contended that neither the Bombay High Court nor the Supreme Court has held that resolution is required to prove the authority of the Union to espouse the cause of the workman. Adv. Shri Bodke lastly submitted that once the reference is made by the Government the employer has no authority to raise the objection that there is no industrial dispute, as the dispute which is referred by the Government is only the industrial dispute.

I have carefully considered the arguments advanced by the learned Advocates for both the parties. The dispute referred by the Government is whether the action of the management of M/s Goa Telecommunications and Systems Ltd., in denying the additional increment to the workman is legal and justified. The contention of the employer is that the above dispute referred by the Government is not an industrial dispute but an individual dispute as it is not espoused by the recognised union or by a substantial number of workmen. The contention of the employer is that the above dispute of the workman is espoused by the Goa Trade and Commercial Workers Union (GT&CW) and it has no locus standi to represent the workman's cause. Before proceeding further, it is necessary to consider the objection of the workman that the employer has no authority to raise the contention that there is no industrial dispute, once the reference is made by the Government. The contention of Adv. Shri Bodke, appearing for the workman, is that the workman was represented by the office bearers of the GT&CW Union, namely Shri Mangueshkar and Shri Coutinho, in the conciliation proceedings before the Labour Commissioner and the employer never objected to the same. Further, the Government made the reference on receipt of the failure report because there is industrial dispute and therefore now the employer cannot turn around and say that there is no industrial dispute because the GT&CW Union has no locus standi to espouse the dispute. This contention of Adv. Shri Bodke is without any substance. The records of the conciliation proceedings show that the employer had raised the objection that GT&CW Union has no locus standi to raise the dispute on behalf of the workmen of the employer as their establishment has an internal union and it is not affiliated to any outside Union. This can be seen from the reply dated 4-10-88 Exb. 13 filed by the employer before the Asst. Labour Commissioner. Therefore it is evident that the employer had objected to the raising of the dispute by the GT&CW Union right from the beginning. The other contention of Adv. Shri Bodke that once the reference is made, the employer cannot object that there is no industrial dispute is also devoid of merit. The Bombay High Court in the case of Iqbal Ahmed Kamaruddin v/s P. L. Muzumdar, reported in 1992 (64) FLR 827 in paragraph 8 of its judgement has held as follows:

"If what is referred to a Tribunal/Labour Court is not an Industrial Dispute it is always open to a party to show to the forum that the dispute referred for adjudication though purported to be an Industrial Dispute, is in reality not an Industrial Dispute at all. This has always been recognised as an exception to the general rule postulated in Sec. 10 (4). It is, therefore, always permissible for an employer to raise an issue as to whether what has been referred is an Industrial Dispute at all and there can be no question of the Tribunal being bound by the order of reference. It is a settled law that the appropriate Government makes a reference upon a prima facie view of the matter as to the existence or apprehension of an Industrial Dispute; it is open to the parties to show that what is referred is not in reality an Industrial Dispute at all."

The above principles laid down by the Bombay High Court therefore makes it clear that the employer is entitled to raise an objection that the dispute referred is not an Industrial Dispute. This being the case, the other contention of Adv. Bodke that once the reference is made, the employer cannot raise an issue that there is no industrial dispute, also fails.

Now, the question is whether the reference is not maintainable because there is no industrial dispute which is referred by the Government as the GT&CW Union has no locus standi to raise the dispute on behalf of the workman, as contended by the employer. The employer has examined Shri Kenkre in support of their case whereas the workman has examined himself and one witness Shri Christopher Fonseca, who is the President of the GT&CW Union. Industrial dispute envisages a collective dispute. Unless there is an industrial dispute no reference can be made by the Government. However, after the introduction of Sec. 2A to the Industrial Disputes Act, 1947, an individual dispute as contemplated under the said section is deemed to be an industrial dispute, within the meaning of the Act. Section 2A contemplates individual dispute as an industrial dispute

when a workman is discharged, dismissed, retrenched or his services are terminated by the employer. The dispute involved in the present case is as regards denying the additional increment to the workman by the employer and hence it does not fall within the scope and ambit of Sec. 2-A of the I.D. Act, 1947. The workman has contended that his dispute is espoused by GT&CW Union which according to him is a minority union and he is a member of the said Union. He has further contended that in the conciliation proceedings he was represented by Mr. Mangueshkar and Mr. Coutinho, who were the office bearers of the said Union. He has also contended that neither Bombay High Court nor the Supreme Court has held that a resolution is required to prove the authority of the Union. The contention of the workman therefore is that though the dispute involved is an individual dispute since it is espoused by the Union it has become an industrial dispute.

It is no doubt true that the individual dispute takes the character of an industrial dispute if it is espoused by the Union or is supported by a substantial number of workmen, as held by the Supreme Court in the case of *M/s Western India Watch Company Ltd. (supra)*. The Supreme Court in the case of *Central Provinces Transport Services Ltd., v/s Raghunath Gopal Patwardhan*, reported in 1957 1 LLJ 27 has held that the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which involve the rights of the workmen as a class and that the dispute founding the individual right of a workman was not intended to be the object of an adjudication under the Act, when the same has not been taken up by the Union or a number of workmen. In the present case the contention of the workman is that the dispute is espoused by the Union. One of the objections that is raised by the employer is that the authority of the Union to espouse the dispute has not been proved. Adv. P. J. Kamat representing the employer has relied upon the decision of the Calcutta High Court in the case of *Deepak Industries Ltd. (supra)* in support of his contention that the Union must prove its authority if it is challenged. I have considered the said decision of the Calcutta High Court, wherein at para. 7 of the judgment the High Court has held as follows:

"But when the dispute is espoused or sponsored by a Union it seems to have been uniformly held that when the authority of the union is challenged by the employer it must be proved by production of material evidence before the Tribunal to which such a dispute has been referred that the Union has been duly authorised either by a resolution of its members or otherwise that it has the authority to represent the workman whose cause it is espousing. Mere fact that the said Union is registered under the Indian Trade Unions' Act is not a conclusive proof of its real existence or the authority to represent the workmen before the Tribunal. Mere negotiation by some official of the Union with the employers for conciliation or executing certain documents on behalf of the workmen prior to the reference are no conclusive proofs of the authority of the union to represent the workman whose dispute it is alleged to be espousing before the Tribunal. It is immaterial whether the said Union is a general union of the workmen of appropriate industry or it is an union of the appropriate establishment relating to which the dispute has arisen between it and its workmen. In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up or supported by the Union of the workmen of the employer against whom the dispute is raised by the individual or by an appreciable number of workmen".

The above decision of the Calcutta High Court is based on the principles laid down by the Supreme Court in the case of *Bombay Union of Journalists and Others v/s The Hindu (supra)*. I am in respectful agreement with the said decision of the Calcutta High Court. In the present case, the employer right from the beginning i.e. even at the stage of the conciliation proceedings had disputed the locus standi of the GT&CW Union to espouse the cause of the workman as can be seen from the reply

of the employer dated 4-10-88 Exb. 13. This authority should exist at the date of the reference. Therefore since the authority of the union was challenged by the employer it was incumbent upon the union to produce material evidence before this Tribunal that it has been duly authorised by a resolution of its members or otherwise, to represent the workman whose cause it is espousing. However, no such evidence has been produced. What has been produced by the workman is the receipt issued to the workman as regards his membership of the GT&CW Union. The said receipt Exb. 24 is the membership fee for the year 1988. This receipt casts a serious doubt as to its genuineness. In the first instance this receipt if at all, was issued to the workman by the union and hence ought to be in his possession. The workman has examined himself. He was very well aware that the employer had right from the beginning disputed the authority of the Union to represent him. Therefore in the normal course the receipt Exb. 24 ought to have been produced by the workman when he examined himself. However, this was not done and it was produced through the witness Shri C. Fonseca, the President of the GT&CW Union, on the ground that the employer had disputed the membership of the workman with the said union. The workman has stated in his cross that the receipts are in possession of the Union. One fails to understand as to how the receipts came to be in possession of the Union when they were issued to the workman. The receipts ought to be in possession of the workman. From the said receipt it can be seen that the number "8" of the year "88" appearing across the column "date" is over written as well as number "8" of the year "1988" appearing across the column "membership for the Year" is also over written. However, the witness Shri Fonseca admitted the over writing only as far as number "8" of the year "88". No explanation has been given by Shri Fonseca for such an over writing. He has stated that he is the President of the GT&CW Union and he has issued the said receipt. The receipt shows that it is to be issued by the Treasurer. One fails to understand as to how Shri Fonseca has issued the said receipt when it ought to have been issued by the Treasurer. When Mr. Fonseca was asked whether he can produce the carbon copy of the said receipt, he stated that he cannot do so because the receipt book is destroyed. One fails to understand as to how exactly this receipt book was destroyed, which was a material piece of evidence as there are over writings in the original of the receipt Exb. 24. The said witness also stated in his cross that he is not able to produce the membership register as well as the membership receipts from the year 1989 till 1994, as they could not be traced. All these facts do cast a serious doubt whether the receipt Exb. 24 is genuine and there is a room to believe that the said receipt is fabricated to support the contention of the workman that he was the member of the said union. In these circumstances it is difficult to place reliance on the said receipt. Even if it is presumed for a moment that the receipt is a true one still it is of no help to the workman, as the said receipt shows that the membership fee paid by the workman is only for the year 1988. No evidence has been produced by the workman to show that he continued to be the member even after the year 1988. As per the principles laid down by the Calcutta High Court in the case of *Deepak Industries Ltd. (supra)*, the authority of the union should exist at the date of the reference. The Government made the reference on 15th June, 1989. Therefore it was vital for the workman to prove that he was the member of the GT&CW Union at the date of the reference and for that purpose ought to have produced membership fee receipt for the year 1989 and further proved that the union had the authority to represent him. The workman has produced the letter dated 31-7-89 Exb. 25 of the employer to show that the employer never objected to the representation of the workman by Mr. Mangueshkar and Mr. Coutinho who according to the workman were the office bearers of the said Union. This letter however does not help the workman. In the first place the said letter is written by the employer on 31st July, 1989 in reply to the letter of the workman dated 28-7-89 which means that the said letter of the workman and the said reply of the employer is subsequent to the order of reference dated 15-6-89, and it pertains to the enquiry proceeding and not the conciliation proceeding. Secondly, the witness Shri Fonseca has admitted in his cross examination that in the letter Exb. 25 it is not mentioned that Mr. Mangueshkar and Mr. Coutinho were the Jt. Secretaries or office bearers of the Union. Adv. Shri

Bodke, representing the workman, has contended that the union has authority to represent the workman in terms of Sec.36 of the I. D. Act, 1947. However, the provisions of this section are not applicable to the facts in this case. The said section is applicable for the purpose of representation of the workman before the Tribunal in a proceeding. In the circumstances, I am of the view that the Union has failed to prove its authority to represent the workman at the date of the reference.

Besides, the Supreme Court in the case of Bombay Union of Journalists (supra) has held that in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up or supported by the union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen. Adv. Shri Bodke, representing the workman, has submitted that in the case of workmen of M/s Dharampal Prem Chand (Saugandhi) (supra) the Supreme Court has overruled its own decision in the case of The Bombay Union of Journalists v/s The "Hindu" (supra). I have gone through the decision of the Supreme Court in the case of workmen of M/s Dharam Pal Prem Chand (supra) and I find that the submission made by Adv. Shri Bodke is absolutely wrong. The Supreme Court in paragraph 11 of its judgement held that the observations made by it in the case of Bombay Union of Journalists (supra) could not be applied or extended to the case before it i.e. in the case of workmen of M/s Dharam Pal Prem Chand (supra). The Supreme Court did not overrule its own decision in the case of Bombay Union of Journalists as submitted by Adv. Bodke. Therefore the law laid down by the Supreme Court in the case of Bombay Union of Journalists still stands. The employer has contended that there is an internal union of the employees of the employer known as "Goa Telecommunications and Systems Employees Association" (For short, 'internal union') which is recognised by the employer, and that the workman is also a member of the said union. The employer, through the evidence of Mr. Kenkre has produced two settlements signed between the said internal union and the employer, Exb. 12 (copy). The employer has also produced letters dated 8-7-87 and 23-9-89 written by the General Secretary of the internal union. The said letters are accompanied by list of the members of the said union. I have gone through the said settlements and the letters. By the above said documents, the employer has established that there is an internal union of its employees which is functioning. The list of the members accompanying the said letters show that the workman is also a member of the said internal union. The workman has merely put suggestion in the cross examination of Shri Kenkre that the documents produced by him are false and fabricated. I have gone through the said documents and I do not find any reason to doubt the said documents. The settlements are dated 21-10-86 and 20-2-90. In the cross of the witness Shri Kenkre it was suggested to him that on 10-7-87 the internal union was not in existence and even thereafter, which the witness denied. However, the workman in his cross admitted that he was paid wages as per the settlement made by the employer with the internal union. This admission is itself enough to prove the existence of the internal union and that it did exist since the year 1986. The witness Shri Fonseca, examined by the workman, in his cross examination has admitted that except for the workman, no other worker of the employer was a member of the GT&CW Union. The Supreme Court in the case of Bombay Union of Journalists (supra) has held that the individual dispute in order to be an industrial dispute should be supported by the union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen. In the present case the dispute of the workmen is not supported by the internal union of the employer, nor there is evidence to show that it is supported by substantial number of workmen of the employer. The Delhi High Court in the case of Wings wear Private Ltd., v/s Its workmen, reported in 1989 (74) FJR 33 has held as follows:

"It is true that if one is to go by the definition given in Sec.2 (k) as interpreted by the Hon'ble Supreme Court in various judgements, it is quite clear that a union which has only microscopic number of workmen as its members cannot sponsor any dispute

arising between the workmen and the management. Even an individual dispute can be sponsored by a union which has substantial membership of the workmen of the particular industry."

I am in respectful agreement with the above principles laid down by the Delhi High Court. In the case of Express News Papers (private) Ltd., v/s First Labour Court (1959-60) 16 FJR 93, the Calcutta High Court held that the union could not represent the workmen concerned so as to transform the dispute between the workman and the company from an individual dispute into an industrial dispute because the case of the dismissed workman was sponsored by a union which had only one of the workmen as a member. In the present case as I have said earlier, there is an admission from Shri Fonseca, the President of the GT&CW Union, that only the workman from the other workers of the employer, was the member of the said union, and there is no evidence that the substantial number of workmen of the employer supported the case of the workman. On the contrary, from the pleadings made by the workman in para. 7 of his statement of claim shows that the workers of the employer were not interested in supporting the case of the workman, as he stated that he approached the internal union as well as the GT&CW Union to do the needful in his matter, but the dispute was raised by the GT&CW Union and not by the internal union and hence the only inference can be drawn is that the internal union was not interested in supporting the case of the workman. Therefore, from the evidence of the workman himself it is an established fact that except the workman Mr. Vithal Pai, no other workmen of the employer was the member of the GT&CW Union. This being the case it cannot be even said that it is a minority union, as contended by the workman. The law laid down by the Supreme Court in the case of Bombay Union of Journalists (supra) states that the union which espouses the cause of the workman should have the workmen of the employer against whom the dispute is raised, as its members. The settled law is that it is not necessary that the majority of the workmen should be the member of the union but substantial number should be the members. In the present case only the workman was the member of the GT&CW Union. In the circumstances it cannot be held that the GT&CW Union could represent the workman so as to transform the dispute between the workman and the employer from an individual dispute into an industrial dispute. The workmen of the employer were not concerned or interested in supporting the case of the workman. Therefore it cannot be held that the GT&CW Union had the authority or locus standi to espouse the cause of the workman or that it had the support of substantial number of workmen of the employer's establishment. It therefore follows that the dispute referred by the Government is an individual dispute of the workman and it does not partake the character of an industrial dispute as contemplated under section 2(k) of the Industrial Disputes Act, 1947. This being the case, I am of the view that as the dispute does not fall within the provisions of Sec.2-A of the I.D. Act, 1947, the reference made by the Government is bad in law, as under the industrial law, the Government can make the reference of only an industrial dispute and not an individual dispute. I, therefore, hold that the employer has succeeded in proving that the GT&CW Union has no locus standi to represent the case of the workman and there is no industrial dispute and hence the reference is not tenable or competent. I, therefore, answer the issue Nos. 2 and 3 in the affirmative.

8. Since the reference itself is held by me to be bad in law and not competent; the question of deciding the other issues or granting any relief to the workman does not arise.

In the circumstances, I pass the following order:

#### ORDER

It is hereby held that no Industrial Dispute existed at the time when the Government made the reference. It is therefore held that the reference made by the Government is bad in law and hence rejected.

No order as to costs. Inform the Government accordingly.

Sd/-  
(AJIT J. AGNI)  
Presiding Officer  
Industrial Tribunal

**Order**

No. CL/Pub-Award/98/11235

The following Award dated 6-12-1996 in Reference No. IT/34/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 16th October, 1998.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/34/96

Shri Vithal Kamat & Raju Naik,  
Rep. by United Mine Workers Union,  
Khadapaband, Ponda-Goa.

— Workman/Party I

v/s

M/s Salgaonkar Industrial  
Gases Pvt. Ltd.,  
Cortalim-Goa.

— Employer/Party II

Workmen-Party I absent.

Employer-Party II represented by Adv. M. S. Bhandodkar.

Panaji, Dated: 6-12-1996.

**AWARD**

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 4-6-96 bearing No. 28/20/96-LAB referred the following dispute for adjudication by this Tribunal.

- (1) Whether the action of M/s. Salgaonkar Industrial Gases Pvt. Ltd., Cortalim, in terminating the services of S/Shri Vithal Kamat and Raju Naik with effect from 13-8-1995 is legal and justified.
- (2) If not, to what relief the workmen are entitled?

2. On receipt of the reference a case was registered under No. IT/34/96 and registered A/D notice was issued to the parties. Party I (for short, 'Workmen') who were represented by United Mine Workers Union, Khadapaband, Ponda, Goa, were duly served with the notice through the said Union. However, neither the workmen nor any person on their behalf appeared in the matter nor any statement of claim was filed on their behalf inspite of opportunities given. The Party II (for short, 'Employer') was represented by Adv. M. S. Bhandodkar, Adv. Bhandodkar submitted that since the workmen had not participated in the proceedings nor filed any statement of claim, the employer did not wish to file any statement of claim on its behalf as the burden was on the workmen to prove that the termination of

their services by the employer w.e.f., 13-8-1995 was illegal and unjustified. Adv. Bhandodkar submitted that in the above circumstances, the reference was liable to be answered in favour of the employer.

3. The reference of the dispute has been made by the Government at the instance of the workmen since they challenged the action of the employer in terminating their services with effect from 13-8-1995 and as such they raised an industrial dispute. The Bombay High Court, Panaji Bench in the case of V. N. S. Engg., & Services V/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 at page 393 had held that there is nothing in the Industrial Disputes Act, 1947 that indicates a departure from the general rule that he who approaches a Court for a relief should prove his case i.e. the obligation to lead evidence to establish an allegation made by a party is on the party making the allegation, the test being that he who does not lead evidence must fail. Their Lordships of the Bombay High Court further held that the provisions of Rule 10-B of the Industrial Disputes (Central Rules 1957) which requires the party raising a dispute to file a statement of demands relating only to the issue in order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the Opposite Party involved, clearly indicates that the party who raises the industrial dispute is bound to prove the contention raised by him and an Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case, i.e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of an order, and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief. I am entirely in agreement with the said decision of the Allahabad High Court.

4. In the present case since the dispute was raised by the workman through the Union and the reference was made by the Government at their instance, the burden was on the workman to prove that the action of the employer in terminating their services w.e.f. 13-8-1995 was illegal and unjustified. The workmen were given several opportunities to file the statement of claim. However, the workmen failed to do so, nor led any evidence in the matter. There is no material before me to hold that the action of the employer in terminating the services of the workmen was illegal and unjustified. In the absence of any evidence it cannot be held that the action of the employer in terminating the services of the workmen is illegal and unjustified. In the circumstances, I hold that the workmen have failed to prove that the action of the employer in terminating their services w.e.f., 13-8-95 is illegal and unjustified and hence I pass the following order.

**ORDER**

It is hereby held that the action of M/s Salgaonkar Industrial Gases Pvt. Ltd., Cortalim, in terminating the services of the Workmen S/Shri Vithal Kamat and Raju Naik with effect from 13-8-1995 is legal and justified.

No order as to costs. Inform the Government.

Sd/-  
(AJIT J. AGNI)  
Presiding Officer  
Industrial Tribunal

Order

No. CL/Pub-Award/98/11237

The following Award dated 10-12-1996 in Reference No. IT/98/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 16th October, 1998.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/98/94

Shri Vithoo S. Kerkar,  
Rep. by General Secretary,  
Chowgule Employees Union,  
Vasco-da-Gama, Goa.

— Workman/Party I

v/s

M/s Chowgule & Company Ltd.,  
Chowgule House,  
Mormugao Harbour, Goa.

— Employer/Party II

Workman—Party I represented by Adv. T. Pereira.

Employer—Party II represented by Shri D. P. Sinha.

Panaji, Dated: 10-12-1996.

AWARD

In exercise of the powers conferred by clause (d) of Sub Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 21-9-94 bearing No. 28/39/94-Lab referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Chowgule & Company Ltd., Mormugao Harbour in issuing superannuation letter No. ADM/RT/35 dated 4-4-94 to Shri Vithoo S. Kerkar, Junior Assistant, Head Officer, with effect from 27-10-94, is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/98/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The workman-Party I (for short, 'workman') was represented by Shri T. Pereira, Advocate, and the party II (For short, 'Employer') was represented by Shri D. P. Sinha. The Workman filed statement of claim which is at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was born on 5-3-1942 and he had learnt only to read and write Marathi alphabets. That he had practically no education in English or Portuguese language. That he was employed

as a Peon in the Head Office of the Employer in October, 1958. That his birth was not registered by his parents since he was born at home at Vasco through local midwife delivery. That the parents of the workman was also illiterate and were not conversant with legal requirements and therefore till about 1966, the birth of the workman remained unregistered. That in the year 1966 or thereabout when the workman attained marriagable age he became aware that for the purpose of marriage a valid birth certificate is required and therefore on getting information about the date of his birth he got his birth registered in the year 1966 with the competent authority. That the employer by letter dated 4-4-94 informed the workman that he would be completing the age of 58 years on 27-10-94 and therefore purported to order the superannuation of the workman w.e.f., the close of the work on 27-10-94. That the workman replied by his letter dated 7-4-94 that he would be attaining the age of 58 years only on 5-3-2000, as his correct date of birth is 5-3-1942. That the workman annexed to the said letter a copy of the birth certificate issued to him and requested the employer to confirm that he is due to retire only on 5-3-2000 and not on 27-10-94. That the employer by letter dated 8-4-94 informed the workman that in the application for employment dated 17-10-58, the workman had declared his date of birth to be 28-10-36 and further informed the workman that the certificate of birth issued in the year 1966 is not acceptable to the employer as it was registered 24 years after the date of birth and the same was received by the employer for the first time only after the issue of retirement notice dated 4-4-94. The workman contended that he had never declared his date of birth to be 28-10-1936 as could be borne out by the fact that there was difference in handwriting in various entries in the bio-data/application form dated 17-10-58. The workman further contended that the action of the employer in considering the workman's date of birth to be 28-10-1936 is arbitrary and in utter disregard to authentic copy records. The workman therefore contended that the action of the employer in retiring him w.e.f., 27-10-94 amounts to forcible premature retirement as his actual date of birth is 5-3-1942 and not 28-10-1936. The workman therefore stated that he was entitled to reinstatement with full back wages, seniority and all other consequential benefits.

3. The employer filed a written statement which is at Exb. 6. The employer stated that the workman was employed as a Peon w.e.f., 13-10-1958 based on the particulars declared by him for the purpose of employment. The employer stated that in the application form the workman had declared his date of birth as 28-10-1936 and his educational qualification as Marathi Std. IV and English Std. III the employer further stated that as the workman had not produced any authenticated document in support of his date of birth and educational qualification, he was requested to produce the same. That however, the workman did not produce the documents as requested by the employer and in the year 1983 the workman expressed in writing his inability to produce the school leaving certificate and the employer therefore accepted the date of birth as declared by the workman. The employer stated that as per the practice in the employer-company the workman was given notice of retirement informing him that he would be retired from service on close of work on 27-10-94. The employer stated that on receipt of the said notice the workman informed the employer that his date of birth is 5-3-1942 and not 28-10-1936 and he also submitted a copy of the birth certificate registered in 1966. The employer contended that on receipt of the said letter from the workman the employer informed the workman that the birth certificate now submitted by him was not acceptable as his birth was registered 24 years after the alleged date of birth. The employer contended that in the circumstances of the case its action in accepting 28-10-1936 as the date of birth of the workman was proper and justified. The employer denied that its action in issuing the letter dated 4-4-94 was neither illegal nor arbitrary as alleged by the workman. The employer therefore stated that the workman was not entitled to any relief as claimed by him and the reference was liable to be rejected. The workman thereafter filed rejoinder which is at Exb. 7.

4. On the pleadings of the parties, issues were framed at Exb. 8 and thereafter the case was fixed for the evidence of the workman. On 28-10-1996 when the case was fixed for hearing, the parties submitted that the dispute between them was duly settled and filed the terms of settlement dated 28-10-96 which is at Exb. 12. The said terms of settlement were signed by the workman and Shri D. P. Sinha, Dy. General Manager (Admn.) on behalf of the employer. The parties prayed that award be passed in terms of the settlement. I have gone through the terms of the settlement and I am satisfied that the same are certainly in the interest of the workman. I, therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 28-10-1996 Exb. 12.

#### ORDER

1. The Workman/Party I Shri Vithoo Sakharam Kerkar was working in the establishment of the Employer/Party II on and from 13-10-1958, first as a Peon and subsequently promoted as Junior Assistant.
2. The Workman/Party I agrees that his correct date of birth is 28-10-1936 as declared by the Workman/Party I in 1958 and confirmed by the original Portuguese documents now produced by the Employer/Party II.

3. The Workman/Party I agrees that he attained the age of superannuation of 58 years on the close of work on 27-10-1994.

4. The Workman/Party I agrees to accept Gratuity amount of Rs. 78,518.10 and other dues amounting to Rs. 8,118.72 inclusive of salary for the month of October, 1994, leave encashment of 30 days and Leave Travel Assistance, in full and final settlement on the basis of his superannuation as on 27-10-1994 which was offered by the Employer/Party II but refused by the Workman/Party I on his superannuation in October, 1994. The Employer/Party II agrees to clear the above dues to Mr. Kerkar within 15 days of passing of the award by this Hon'ble Industrial Tribunal in this reference.

5. The Workman/Party I agrees that he has no dispute or claim of whatsoever nature against the Employer/Party II with respect to his employment with the Employer/Party II.

There shall be no order as to costs. Inform the Government accordingly about the passing of the award.

Sd/-  
(AJIT J. AGNI)  
Presiding Officer  
Industrial Tribunal